

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

NORA HILDA DEL TORO,
Plaintiff,

vs.

FIESTA MART, LLC,
Defendant.

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Civil Action No. 4:21-cv-1166

DEFENDANT'S NOTICE OF REMOVAL

Defendant Fiesta Mart, LLC ("Defendant") files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446 and respectfully shows:

Commencement and Service

1. On March 10, 2021, Nora Hilda Del Toro ("Plaintiff") commenced this action by filing an Original Petition ("State Court Petition") in the 157th Judicial District Court of Harris County, Texas. The case is styled Cause No. 2021-13950; *Nora Hilda Del Toro vs. Fiesta Mart, LLC*.¹

2. The lawsuit was first served on Defendant on March 12, 2021.²

3. Defendant timely answered in state court on April 1, 2021.³

4. This Notice of Removal is filed within thirty days of the receipt of service of process and is therefore considered timely pursuant to 28 U.S.C. § 1446(b). This

¹ See *Exhibit C*, Plaintiff's Original Petition with citation.

² See *Exhibit D*, Citation and Return of Service.

³ See *Exhibit E*, Defendant's Original Answer and Affirmative Defenses.

Notice of Removal is also filed within one year of the commencement of this action and is thus timely pursuant to 28 U.S.C. § 1446(c).

Grounds for Removal

5. Defendant is entitled to remove the state court action to this Court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 because this action is a civil action involving an amount in controversy exceeding \$75,000.00 between parties with diverse citizenship.

Diversity of Citizenship

6. There is complete diversity of citizenship between Plaintiff and Defendant.

7. Plaintiff is a citizen of Texas.⁴

8. Defendant Fiesta Mart, LLC is a citizen of Delaware and California, not Texas.⁵ While Defendant Fiesta Mart, LLC is a limited liability company organized under the laws of Texas, its sole member is Bodega Latina Corp., a Delaware corporation with its principal place of business, or its “nerve center,” in California.⁶ Defendant’s citizenship as an LLC is determined by the citizenship of its members.⁷ A corporation is deemed to be a “citizen” of the state where it maintains its principal

⁴ See *Exhibit C*, Plaintiff’s Original Petition at ¶ II.

⁵ See *Exhibit F*, Affidavit of Michael Saltzstein.

⁶ *Id.* at ¶ 3.

⁷ See e.g., *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008).

place of business (its “nerve center”) and the state of its incorporation.⁸ Therefore, Defendant is a citizen of Delaware and California.

Amount in Controversy

9. This is a personal injury case with well over \$75,000 in controversy at the time of this removal. Per her Petition, Plaintiff pleads monetary relief in an amount more than \$250,000 but not more than \$1,000,000, pursuant to Rule 47(c) of the Texas Rules of Civil Procedure.⁹

Venue

10. Venue lies in the Southern District of Texas, Houston Division, pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because Plaintiff filed the action in this judicial district and division.

Notice

11. Defendant will give notice of the filing of this Notice of Removal to all parties of record pursuant to 28 U.S.C. § 1446(d). Defendant will also file with the clerk of the state court and will serve upon Plaintiff’s counsel, a notice of the filing of this Notice of Removal.

Exhibits to Notice of Removal

12. In support of this Notice of Removal and pursuant to 28 U.S.C. §1446(a), true and correct copies of the following documents are attached to this Notice as corresponding lettered exhibits:

⁸ See, 28 U.S.C § 1332(c)(1); *see also*, *Hertz Corp. v. Friend*, 559 U.S. 77, 130 S. Ct. 1181, 1185-86 (2010).

⁹ See ***Exhibit C***, Plaintiff’s Original Petition at Section “I.”

- A. Index of documents filed in Cause No. 2021-13950; *Nora Hilda Del Toro vs. Fiesta Mart, L.L.C.*, in the 157th Judicial District Court of Harris County, Texas.– ***Exhibit A***
- B. Docket Sheet for Cause No. 2021-13950; *Nora Hilda Del Toro vs. Fiesta Mart, L.L.C.*, in the 157th Judicial District Court of Harris County, Texas. –***Exhibit B.***
- C. Plaintiff's Original Petition filed on Cause No. 2021-13950; *Nora Hilda Del Toro vs. Fiesta Mart, L.L.C.*, in the 157th Judicial District Court of Harris County, Texas. – ***Exhibit C***
- D. Citation Issued March 11, 2021; Served on March 12, 2021 and Return of Service filed March 17, 2021. – ***Exhibit D***
- E. Defendant's Original Answer and Affirmative Defenses filed April 2, 2021, Cause No. 2021-13950; *Nora Hilda Del Toro vs. Fiesta Mart, L.L.C.*. – ***Exhibit E.***
- F. Affidavit of Michael Saltzstein. – ***Exhibit F***
- G. List of All Counsel of Record – ***Exhibit G***
- H. Notice of Filing Removal in State Court – ***Exhibit H***

Prayer

WHEREFORE, Defendant, pursuant to the statutes cited herein and in conformity with the requirements set forth in 28 U.S.C. § 1446, removes this action from the 157th Judicial District Court of Harris County, Texas to this Court and for such other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

By: /s/ Trek Doyle
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*ATTORNEYS FOR FIESTA MART,
LLC*

 Doyle & Seelbach

CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of the above and foregoing document has been served by electronic service to counsel identified below on this, the 9th day of April 2021.

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